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10/761,594	01/21/2004	Peter Hanosek	13745	4257

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ORUM & ROTH  
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CHICAGO, IL 60604

EXAMINER
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NGUYEN, PHU HOANG

ART UNIT	PAPER NUMBER
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1791

MAIL DATE	DELIVERY MODE
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01/10/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/761,594

Applicant(s)

HANOSEK ET AL.

Examiner

Phu H. Nguyen

Art Unit

1791

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 22 October 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 2,3,5-7,9,11-27,29,30 and 32 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2,3,5-7,9,11-27,29,30 and 32 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_.

### DETAILED ACTION

Acknowledgement is made of Amendment received 10/22/2007. Claims 11 and 30 are currently amended. Claims 2-3, 5-7, 9, 12-27, 29 and 32 are previously presented.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 11-13, 2-3, 5, 9, 16-18 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith et. al. (U.S Patent No. 5385157).

Regarding claim 11, Smith discloses an ash collector for smokers, comprising a bar-shaped container (20, fig. 1) with an opening on one end that is closed by a removable closure body (50, fig. 1) which is a solid non-insulating structure having no insulating air gaps, comprises a recess on an end facing the interior of the container and consists, in full or predominantly, of a material resistant to destruction from the glowing ash or cigarettes or cigars (column 3, line 2-16). Smith does not expressly disclose the thermal capacity of the closure body is selected to ensure that when a cigar or a cigarette is stubbed out in the recess of the closure body, the temperature of its outer surface will not rise above 50°C. However, because Smith fails to specifically limit the teaching to any particular temperature range, it would cover all temperature at which an object would feel warm or hot to the user since Smith discloses the container

and the closure body are made from a suitably rigid and heat resistant material such as metal (column 3, line 3-4). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to choose a metal that does not permit the outer surface of the closure body to increase above 50°C when a cigar or cigarette is stubbed out in the recess of the closure body so that it does not discomfort an user holding the device. Accordingly, claim 11 is rejected.

Regarding claims 2-3, Smith discloses that the closure body is made from same material as the container such as metal (corresponding to the claimed "high thermal conductivity" recites in the instant claim 3) metal (column 3, line 2-16). Accordingly, claims 2 and 3 are rejected.

Regarding claim 5, Smith does not disclose the recess of the closure body tapers from its end toward the interior of the closure body. However, due to a lack of criticality and unexpected results, the tapering of the recess of the closure body is a matter of design choice. Accordingly, claim 5 is rejected.

Regarding claim 9, Smith discloses the closure body is provided with a protruding ridge (180, fig. 4) around an inside surface (190, fig. 4) (corresponding to the claimed "the outer surface of the closure body is provided with a groove" recites in the instant claim 9) adapted to receive the ridge (140, fig. 4) (corresponding to the claimed "sealing ring" recites in the instant claim 9). Accordingly, claim 9 is rejected.

Regarding claim 12, Smith discloses a clip (120, fig.1) attached to the closure body. Accordingly, claim 12 is rejected.

Regarding claim 13, Smith discloses the container is made from metal (column 3, line 2-4). Accordingly, claim 13 is rejected.

Regarding claim 16, Smith discloses the container can be made from plastic for extrusion (column 3, line 2-6). Accordingly claim 16 is rejected.

Regarding claim 17-18 and 32, Smith does not disclose any specific size of the outer diameter or length of the container. However, due to a lack of criticality or unexpected results, it would be obvious to one of ordinary skill in the art to design the container with an outer diameter and a length large enough to easily accommodate the entire length of the cigarette or cigar, but small enough so that the device would not be bulky and awkward. Accordingly, claims 17-18 and 32 are rejected.

Claims 6-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith et al. (U.S Patent No. 5385157) as applied to claim 11 above, and further in view of Nicotra (U.S Patent No. 5862809). Smith does not disclose the recess in the closure body (a snuffer) has a particular shape. Nicotra discloses the use of a snuffer is a bowl or convex shape preferably of a truncated cone (column 2, lines 38-43). Nicotra does not disclose the snuffer is in the closure body. However, it would have been obvious to one of ordinary skill in the art to combine the teachings of Smith with the teachings of Nicotra to design an ash collector with a closure body that is used as a cigarette/cigar snuffer. Moreover, it would have been obvious to design the snuffer or closure body with a shape that would be most effective in extinguishing the cigarette or cigar whether concave or conical in shape. Accordingly, claims 6 and 7 are rejected.

Claims 14-15 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith as applied to claims 13 and 3 above, and further in view of Lustbader (U.S. Patent No. 3405719). Smith does not expressly disclose the metal is aluminum and suited for deep drawing. Lustbader discloses a device for retaining ashes (an ashtray) that is made from aluminum, which is a metal suited for deep drawing (column 3, lines 17-18). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to construct the ash collector with selected metal such as aluminum. Accordingly, claims 14-15 are rejected.

Claims 19, 20, 21 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith as applied to claim 11 above, and further in view of Kojima (U.S. Patent No. 4,996,995). Regarding claim 20, Smith does not disclose an ash collector comprising an integrated flashlight. However, Kojima teaches an ashtray, which has a light means, i.e. an integrated flashlight. It would have been obvious to one of ordinary skill in the art at the time of the invention to have combined the teachings of Smith with the teaching of Kojima to make an ash collector that can be easily used in a dimly-lit place (column 1, lines 38-39). Accordingly, claim 20 is rejected.

Regarding claims 19 and 21, Smith does not disclose that in addition to a chamber intended to collect ashes the ash collector comprises second chamber that is accessible from the end of the container oppose the closure body. However, it would have been obvious to one of ordinary skill in the art at the time of invention to make the container such that it would have a separate compartment for collecting ashes and a

separate compartment for the flashlight so that the flashlight would not be harmed or affected by the cigarette/cigar ashes. Accordingly, claims 19 and 21 are rejected.

Regarding claim 22, Kojima discloses an ashtray with a light means including a light bulb. Kojima fails to teach that the end of the container opposite the closure body is provided with a sleeve which is detachably connected with the container. However, it would have been obvious to one of ordinary skill in the art at the time of the invention for the sleeve to be detachably connected so that the bulb may be changed or replaced. Accordingly, claim 22 is rejected.

Regarding claim 23, due to a lack of criticality and unexpected results, the sleeve further accommodating a reflector and a glass pane closing of the sleeve is a matter of design choice. Accordingly, claim 23 is rejected.

Claims 24-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith as applied to claim 11 above, and further in view of Hernlein (U.S. Patent No. 5,605,226). Regarding claim 24, Smith does not disclose the ash collector comprising an integrated cigarette lighter. However, Hernlein discloses ashtrays or ash collectors may be combined in one device with other smoker's accessories, such as cigarette lighters. It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Smith with the teaching of Hernlein in one appliance as a matter of convenience to the smoker (column 1, lines 24-32). Accordingly, claim 24 is rejected.

Regarding claim 25, Smith and Hernlein does not disclose the cigarette lighter provided in the second chamber. However, it would have been obvious to one of

ordinary skill in the art at the time of invention to make the container such that it would have a separate compartment for collecting ashes and a separate compartment for the cigarette lighter so that the cigarette lighter would not be harmed or affected by the cigarette/cigar ashes. Accordingly, claim 25 is rejected.

Regarding claim 26 and 27, Smith does not disclose a removable cap that is pivotally mounted on the container protects the cigarette lighter. However, due to a lack of criticality and unexpected results, the cigarette lighter being protected by a removable cap that is pivotally mounted on the container is a matter of design choice. Accordingly, claims 26 and 27 are rejected.

### ***Response to Arguments***

Applicant's arguments filed 10/22/2007 have been fully considered but they are not persuasive.

Applicant essentially argues that Smith (U.S Patent No. 5385157) discloses nothing about thermal capacity of structure similar to the presently claimed closure body. Smith is a thin walled closure body. It is not designed to, and in its disclosed form physically cannot store heat from a cigarette in the thermal capacity of a conducting element. However, as discussed above for claim 11, Smith discloses the cylindrical cap (50, fig. 1) (corresponding to the claimed "removable closure body") is made from a suitably rigid and heat resistant material such as metal (column 3, lines 2-16). Therefore, a metal closure body as disclosed by Smith is capable of acting as a heat sink element for conducting and storing heat.

### ***Conclusion***



The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Gilbert et al. (U.S. Patent No. 4886076) discloses a cigarette snuffer. In embodiment of the invention in which snuffer body 100 has a rounded semi-spherical bottom 102. Body 100 is internally tapered to achieve the same snuffing characteristics of body 18 of FIGS. 1-4. In this embodiment of the invention, the open end of the body does not have a flared or annular flange, however, body 100 does support an integral pocket clip 104 so that the snuffer body can be attached to a thin object. This embodiment of the invention can be formed of any suitable material such as a molded plastic material because the extinguishing motion occurs so quickly that a metal is not required (column 2, lines 46-57).

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phu H. Nguyen whose telephone number is 571-272-5931. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steven Griffin can be reached on 571-272-1189. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

P.N 1/4/2008

  
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